Group Health Association, Inc. *and* Christopher X. Fedor, Petitioner and Office and Professional Employees International Union Local 2, AFL–CIO.[1] Case 5–RD–1102

April 28, 1995

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS, BROWNING, COHEN, AND TRUESDALE

On September 13, 1993, the National Labor Relations Board granted the Petitioner's request for review of the Regional Director's Decision and Order, dated February 25, 1993, dismissing the instant decertification petition.[2] The issue on review is whether medical technologists generally, and the medical technologists employed by the Employer specifically, are professional employees as defined in Section 2(12) of the Act. The Board granted review on this issue because the question of whether the medical technologists employed by the Employer are entitled to a self-determination election in the first instance depends on the professional status of those employees.[3] Noting that the professional status of medical technologists is a frequently litigated issue which has resulted in conflicting and fact specific case law, the Board also solicited amicus briefs on this issue from all interested parties.

The Board has considered the decision and the record in light of the briefs, including the nine amicus briefs,[4] and has decided to affirm the Regional Director's rulings, findings, and conclusions only to the extent consistent with this Decision on Review and Order.

Based on our review of the record and our administrative experience, we find that medical technologists generally, and the medical technologists employed by the Employer specifically, are professional employees as defined in Section 2(12) of the Act, and, in the future, we will apply a rebuttable presumption to this effect. We believe that the establishment of this presumption will result in greater consistency and stability, and more efficient use of the Board's resources, without prejudicing the rights of the parties or these employees under the Act. We, however, affirm the Regional Director's dismissal of the instant decertification petition without prejudice to any party's subsequently filing a representation petition to represent these employees.

Background

The Employer is a health maintenance organization (HMO) operating in the Washington, D.C. metropolitan area. The Union is the exclusive bargaining representative in a Board certified[5] unit of approximately 200 employees consisting of all office and technical employees, excluding, inter alia, professional employees. The Employer and the Union have been parties to successive collective-bargaining agreements, the most recent of which expired on October 31, 1992. The Petitioner filed the instant petition seeking a decertification election among approximately 42 unit employees classified as medical technologists, on the grounds that they are professional employees who have never had the opportunity to vote in a *Sonotone* election. The Intervenor seeks to represent the medical technologists in a separate bargaining unit. After the hearing in this matter, the Regional Director issued a decision and order finding that only the six medical technologists working in the microbiology department at the Employer's New York Avenue lab facility meet the statutory definition of professional employees, and that the other approximately 36 medical technologists are not professional employees under the Act.[6] Thereafter, the Petitioner filed a request for review of the Regional Director's decision and the Board granted review.

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[1] Medical Technologists Association intervened in this proceeding.

[2] The Board's Order granting review, dated September 13, 1993, inadvertently omitted former Member Devaney's dissent in which he stated that he would deny review.

[3] It is well established that decertification petitions are inappropriate where, as here, the unit sought to be decertified is not coextensive with the certified or recognized unit. *Green-Wood Cemetery*, 280 NLRB 1359 (1986); *Campbell Soup Co.*, 111 NLRB 234 (1955). The one exception to this general proposition is a decertification petition filed for a unit of professional employees who are included in a mixed unit of professional and nonprofessional employees and who have never had the opportunity to vote in a self-determination election following the procedures of *Sonotone Corp.*, 90 NLRB 1236 (1950), to determine whether they wish to be represented in the same unit with nonprofessionals. *Utah Power & Light Co.*, 258 NLRB 1059 (1981).

[4] The Petitioner filed a brief in support of his request for review. The Union filed an opposition brief to the Petitioner's request for review and filed a brief on review. The following organizations filed amicus briefs: the American Association for Clinical Chemistry and the Clinical Laboratory Management Association; Arkansas State University, Medical Technology Program; the American Society of Clinical Pathologists, Inc.; the College of American Pathologists; the Arkansas Coalition of Laboratory Professionals; the Credentialing Commission of the International Society for Clinical Laboratory Technology; the American Association of Blood Banks; Service Employees International Union, AFL–CIO, CLC; and, the American Society for Clinical Laboratory Science (formerly the American Society for Medical Technology). Neither the Employer, the Intervenor, the American Medical Association, nor the American Hospital Association have filed briefs or have taken a position on this issue before the Board.

[5] The unit was certified following Board elections in 1978 or 1979 in Case 5–RC–7219 and again in 1986 in Case 5–RD–929.

[6] Although finding that six of the Employer's medical technologists are professional employees, the Regional Director, nevertheless, dismissed the decertification petition because he found that it seeks to decertify a unit that is not coextensive with the recognized bargaining unit, finding that the *Utah Power* exception (see fn. 2) is distinguishable from the instant case.

Facts

Medical technologists generally engage in a wide array of laboratory testing on various media of patient samples, including blood, urine, tissue, and the like, employing principles of technology and science—microbiology, hematology, chemistry, immunology, and blood banking—to perform and evaluate the tests. Some of these procedures, but not all, are automated. The nonautomated tests include microscopic selection, exclusion, and identification, chromatographic separation and quantification, electrophoretic separation, and isotopic and nonisotopic immunoassays. When testing is performed using automated laboratory equipment, the functioning of that equipment constitutes only one piece of the overall testing process. Medical technologists are required to engage in a substantial degree of pre- and post-testing analysis including: analyzing patient specimen acceptability; determining the proper methodologies for testing the specimen; properly calibrating the equipment for testing; determining that the equipment is functioning properly; maintaining the equipment; troubleshooting equipment problems and taking appropriate corrective action as necessary; evaluating the automated results to determine if the result is an accurate reading or the result of an equipment malfunction; determining whether a test needs to be rerun; determining whether additional tests are appropriate based on the results; and, immediately reporting ''panic values'' to physicians.[7]

The Employer employs approximately 42 medical technologists, approximately half of whom work at the Employer's main laboratory at New York Avenue, N.W., Washington, D.C. The remaining medical technologists work in one of the Employer's seven satellite (stat) labs, located in Washington, D.C., Virginia, and Maryland. Those labs are Marlow Heights, Prince Georges, West End, Annandale, ''RO,'' Fair Oaks, and Skyline. The Employer requires that the medical technologists possess a BS degree and American Society of Clinical Pathologists (ASCP) certification. ASCP is a nonprofit medical specialty organization which establishes and maintains a voluntary program to examine, certify, and register nonphysician medical or clinical lab personnel. ASCP certification requires that medical technologists hold a baccalaureate degree and have completed 3 to 5 years of clinical experience or be trained in an accredited program.

Medical technologists employed by the Employer perform approximately 2.5 million tests per year on blood, urine, and tissue specimens. Medical technologists receive instruction on which tests to perform on a given specimen pursuant to 12 forms used by the Employer. No test is performed unless it is designated on one of these forms. Test results are subsequently reported on these forms.

Although all of the medical technologists working for the Employer are responsible for performing all of the various tests, as described above, the specific work performed by each medical technologist differs somewhat depending on where the employee works. The full-time medical technologists working at the New York Avenue lab are each assigned to only one of three departments at that facility: hematology, chemistry, or microbiology. Part-time and night-shift medical technologists, however, rotate throughout those departments. Medical technologists working in one department rarely perform procedures outside of that department's area of specialty.

In the hematology department, medical technologists perform most of the tests on a machine—the coulter STKR—but approximately one-third of the tests in this department are performed manually. These medical technologists calibrate the coulter STKR by testing a manufacturer-supplied control substance. Medical technologists also evaluate samples and results of the automated tests and decide if the automated results are accurate and acceptable or whether they must be rejected because of a machine malfunction or corruption of the sample. The medical technologists evaluate sample quality in relation to the test ordered, and must be knowledgeable regarding what impurity levels are acceptable for different tests. In addition, the medical technologists in hematology must also possess knowledge of potential machine malfunctions to determine whether a given test result is the product of such a malfunction or the accurate result of a patient problem. If an emergency result known as a ''panic value'' is detected, medical technologists contact the physicians.

The chemistry department is the largest department at the New York Avenue lab. Medical technologists in this department perform blood and urine analysis, almost all of which is automated. Each machine requires different specimen preparation and the bulk of the medical technologists' work consists of manual sample preparations for these tests. Test results are printed out with a numerical value on a form which is preprinted to indicate the normal range of test results. The overwhelming majority of the test results are determined by the equipment. Medical technologists also run quality control tests on the machines using commercially prepared samples and perform routine maintenance on the machines.

Medical technologists in the microbiology department prepare specimens by inoculating selected cultivation media. After the requisite period for growth, the medical technologists ''read'' the specimen and may perform reactivity tests to select the proper anti-

[7] This description of duties of medical technologists reflects both the evidence of the duties of the medical technologists whose status is at issue in this proceeding and the information supplied to us by various amici concerning the duties of medical technologists in general.

biotics for the patient. All of the testing in the microbiology department is performed manually—the medical technologists rely on visual inspection of the samples to determine test results and they select various media to determine the organisms' susceptibility to antibiotics. Medical technologists in this department must be able to identify a diversity of parasites and frequently consult one another or an outside reference when they encounter an unfamiliar organism.

By contrast to the specialization of the medical technologists working at the New York Avenue lab, medical technologists working in the seven stat labs are generalists, who perform a smaller variety of tests in each of the three areas of specialty. This work consists of fewer tests with a shorter target turnaround time of 1 hour. These medical technologists generally perform 12 to 15 procedures, but they are capable of performing up to 25 procedures. The stat labs medical technologists also prepare specimens to be forwarded to the New York Avenue lab or other outside labs. Medical technologists in the stat labs usually perform only the tests ordered by the physician, but, on occasion, may suggest other procedures to the physician. Medical technologists also calibrate the testing machine and equipment, troubleshoot and perform minor machine repair, and perform quality control calculations. Medical technologists may reject the results of an automated test because of machine errors or faults in the patient sample.

The Applicable Law

Section 2(12)(a) of the Act defines professional employees as those who meet four conjunctive criteria: employees must be engaged in work that is:

> (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

Applying this conjunctive test to medical technologists, the Board has reached differing results, generally finding them to be professional employees,[8] but occasionally finding that they do not meet the statutory definition of professional employees[9] or finding that they are instead, technical employees.[10] In those cases in which the Board has found that medical technologists are not professional employees it has heavily stressed the medical technologists' failure to meet the requirements of subparts (i) and (ii) of Section 2(12), and, indeed, those two requirements have been the predominant focus of the Board's analysis in this area.

The Regional Director's Decision and the Briefs on Review

The Regional Director found that all of the medical technologists employed by the Employer meet the requirements of subparts (iii) and (iv) of Section 2(12)(a), but that only the medical technologists employed in the microbiology department at the New York Avenue lab meet all four requirements. In this regard, the Regional Director found that the medical technologists in the microbiology lab perform tests which require the consistent exercise of discretion because results are almost exclusively the product of visual inspection for determining the presence or absence of abnormalities and for identifying the specific nature of any pathology or parasite. Moreover, these medical technologists independently determine which tests to perform to ascertain drug resistance or susceptibility.

In contrast, however, the Regional Director found that the medical technologists working in the other departments at the New York Avenue lab and those working in the stat labs perform tests which are highly mechanized, automated, and more routine and that they do not decide which tests to run nor do they determine what constitutes a normal or abnormal result. Therefore, he concluded, citing *Twin City Hospital*, supra, that the work performed by these medical technologists does not require the consistent exercise of discretion and independent judgment, and is not predominantly intellectual in nature.[11]

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[8] See *St. Barnabas Hospital*, 283 NLRB 472 (1987); *Barnert Hospital Center*, 217 NLRB 775 (1975); *Alexian Bros. Hospital*, 219 NLRB 1122 (1975); *Mason Clinic*, 221 NLRB 374 (1975); *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *Compton Hill Medical Center*, 251 NLRB 1547 (1980); *Illinois Valley Community Hospital*, 261 NLRB 1048 (1982); *Mercy Hospital of Sacramento*, 217 NLRB 765 (1975); *Methodist Hospital of Sacramento*, 223 NLRB 1509 (1976).

[9] *Twin City Hospital Corp*., 304 NLRB 173 (1991); *Norton Community Hospital*, 291 NLRB 1174 (1988).

[10] The Board has defined ''technical employees'' as those ''who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training.'' *Barnert Hospital Center*, supra at 777. See *National Health Laboratories*, 239 NLRB 213 (1978); *Middlesex General Hospital*, 239 NLRB 837 (1978); *St. Elizabeth's Hospital of Boston*, 220 NLRB 325 (1975); *Samaritan Health Services*, 238 NLRB 629 (1978).

[11] The Union filed a brief on review, generally arguing in support of the Regional Director's decision, but also arguing that he erred in finding that medical technologists meet the requirements of subpart (iii) of Sec. 2(12).

In his request for review, the Petitioner contends that the Regional Director erred in not finding that all of the medical technologists employed by the Employer meet all of the 2(12) requirements for professional employees. Additionally, with one exception, the amicus briefs similarly argue that all of the medical technologists should be found to be professional employees.[12] In the briefs urging the Board to find that medical technologists generally, and the Employer's medical technologists specifically, are professional employees, several common themes emerge.

First, the briefs maintain that the Board incorrectly has focused on and has overemphasized the role of automation in evaluating the nature of the work performed by the medical technologists, that the appropriate focus should be on the pre- and post-test procedures performed by the medical technologists and the degree of detail required of these nonautomated functions; and that by focusing on these procedures, which are essential components of the medical technologists' work, it is clear that the technologists are not mere machine operators. Much of their work cannot be automated but is predominantly intellectual in character and requires the consistent exercise of discretion and independent judgment. Further, it is argued that the pieces of automated testing equipment are merely tools which perform automated analysis of a sample specimen; they do not eradicate the need for judgment and discretion in the performance of that testing. The increased use of more complicated equipment to perform more sophisticated and complex tests should not have the illogical result of diminishing the professional status of the work at the very time that the subject matter of the job is becoming more sophisticated and specialized. Rather, increased automation of testing merely allows medical technologists to be more efficient, accurate, and productive in the tasks that they perform.

[12] Only the Credentialing Commission of the International Society for Clinical Laboratory Technology (Credentialing Commission) argued in support of the Regional Director's decision. It urges the Board to adopt a standard which incorporates the Department of Health and Human Services' (HHS) guidelines, promulgated pursuant to the Clinical Laboratory Improvement Act of 1988, 42 U.S.C. § 263a (enacted to improve the accuracy of clinical laboratory testing through appropriate licensing and regulation by HHS). Under those guidelines, duties and procedures performed by medical technologists are organized by level of complexity. Lab tests are divided into three categories ranked according to level of difficulty (i.e., exempt, moderately complex, and highly complex). The HHS guidelines rely on seven criteria to distinguish between moderately complex and highly complex tests. The Credentialing Commission argues that only medical technologists performing the tests classified as highly complex would qualify as professional employees under Sec. 2(12) because these procedures require the use of independent judgment and discretion and are of a predominantly intellectual nature. Finally, the Credentialing Commission notes that utilization of this standard would produce the same result reached by the Regional Director, because only the tests performed by the medical technologists in the microbiology department are classified as highly complex.

The briefs also highlight the stringent education and training requirements of medical technologists, noting that these requirements exist because they are essential to the performance of the work of the medical technologists and are illustrative of the predominantly intellectual nature of that work. It is argued that the educational and training background cannot be divorced from the assessment of the nature of professional tasks and that all medical technologists must be able to perform all of the tests which are required by the profession's scope of practice, irrespective of where a particular medical technologist is employed or the requirements of a specific job. Additionally, by way of comparison, the briefs point out that the Board finds registered nurses (RNs) to be professional employees[13] and that the educational requirements and certification procedures for medical technologists are equal to or greater than those for RNs.

Finally, the briefs set forth additional factors indicative of the professional status of medical technologists. It is argued that the existing certification procedures (i.e., ASCP) provide the ''empirical benchmark'' of professionalism, because they establish nationally recognized minimum standards for the performance of medical technologists' duties. Additionally, the briefs note that Congress has recognized the importance of medical technologists' work by passage of the Clinical Laboratory Improvement Act of 1988 (CLIA), 42 U.S.C. § 263a, which is designed to improve the accuracy of clinical laboratory testing by appropriate licensing and regulations. Specifically, the CLIA requires medical technologists to participate in regular, ongoing proficiency testing to ensure that they have the intellectual capacity, experience, and skills necessary to perform the tasks entrusted to them. This Congressional concern regarding the skills required of medical technologists underscores the professional nature of their work.

Analysis and Conclusions

a. *Medical technologists are professional employees*

Having given due consideration to the record, briefs, case law, and our administrative experience in this area, we find that a presumption is warranted that medical technologists are professional employees as defined in Section 2(12) of the Act and we will presume them to be so in all future cases, subject to re-

[13] *Mercy Hospital of Sacramento*, supra; *Memorial Clinic*, 220 NLRB No. 217 (Oct. 1, 1975) (inadvertently omitted from Board bound volumes); *Centralia Convalescent Center*, 295 NLRB 42 (1989). See also the Board's Notice of Proposed Rulemaking and Notice of Hearing and Second Notice of Proposed Rulemaking on Collective-Bargaining Units in the Health Care Industry (the Board's Health Care Rules), 29 CFR § 103, 284 NLRB 1521, 1543–1552 (1987).

buttal by the party or parties contending they do not meet the definition. Applying that presumption here, and in the absence of sufficient evidence to rebut it, we further find that all of the medical technologists at issue are professional employees.[14]

Turning first to subparts (iii) and (iv), we note that it is generally settled that medical technologists meet the requirements of these subparts. With regard to subpart (iii), we note that the Board has not previously found that the results of work performed by the medical technologists can be standardized in relation to a given period of time and we decline to do so here. Laboratory testing procedures, whether manual or automated, are not readily standardized because of the unique characteristics of each individual sample specimen, laboratory testing equipment, and medical technology. Thus, testing of the same media of sample specimen on the same piece of equipment often will differ from situation to situation. This variability of testing, then, cannot readily be measured as a function of time.[15]

Regarding subpart (iv) of Section 2(12), the Board similarly has found that the work of medical technologists requires knowledge and education of a specialized and advanced nature, which is customarily acquired by a program of study in a field of science and by regimented training in a hospital.[16] The Employer, here, requires a BS degree and ASCP certification. Initially, we note that the educational requirements of medical technologists are becoming increasingly stringent. Most medical technologists possess a bachelor's degree in some field of science (e.g., biology, chemistry, or physical science) and have completed a clinical internship.[17] Many medical technologists also possess advanced graduate degrees, some holding both M.S. and Ph. D. degrees. Those medical technologists who do not hold a bachelor's degree generally have received extensive education and training over a period of years and have passed a certification test.

Moreover, medical technologists employed by hospitals also must meet education and training standards set by the hospitals, because the hospitals are required to ensure the educational backgrounds of their medical technologists in order to maintain accreditation from the Joint Commission on Accreditation of Healthcare Organizations and/or state and local licensing agencies.[18] Medical technologists employed in clinical laboratories also must meet the requirements of the CLIA. Additionally, the majority of medical technologists are affiliated with certain nationally recognized professional organizations, including the ASCP, which maintain their own requirements for certification (e.g., ASCP certification requires that a medical technologist must hold a baccalaureate degree with either a major in one of the physical sciences or the completion of a specific number of science courses and have completed 3 to 5 years of clinical experience or be trained in an accredited program). These requirements for specialized education, training, licensing, and certification meet the requirements of subpart (iv) of Section 2(12).

As noted above, the Board's analysis in this area primarily has focused on subparts (i) and (ii) of Section 2(12)—the intellectual nature of the work and the need for discretion and independent judgment. After careful review of the duties and responsibilities of medical technologists, we are persuaded that they meet the requirements of subparts (i) and (ii). While automation has increased in the medical technology field, the essential intellectual nature of the work and the necessity for discretion and independent judgment in its performance has not been substantially eroded.

A close evaluation of the totality of the duties performed by the medical technologists, here, including the pre- and post-testing duties, illustrates the predominantly intellectual nature of the work and the consistent exercise of discretion and independent judgment. The record establishes that a significant percentage of testing in some specialty areas (notably microbiology) is completely manually performed. It is undisputed that these manual tests meet the requirements of subparts (i) and (ii).

[14] We find it unnecessary to remand this case to the Regional Director for the purpose of providing the Union an opportunity to submit additional evidence to rebut the presumption. Although we have now framed this issue in terms of a rebuttable presumption, the parties would have no reason now to present additional evidence different from that which was relevant in proceedings under our prior precedent. Even under our prior precedent, it was incumbent on parties seeking to prove that medical technologists did not meet the 2(12)(a) definition to establish precisely what duties the technologists performed and then to show that those duties failed to meet any one of the four requirements of the definition. The exhaustive record in this case clearly establishes what duties the various medical technologists at issue here perform, i.e., duties customarily assigned to employees in this classification; and any evidence that the Union might use to rebut the presumption of professional status is essentially the same as that evidence (had it existed), which the Union would have introduced to make its case under preexisting law.

[15] We do not agree with the Union that the Employer's establishment of target deadlines for testing in the stat labs is, alone, sufficient to find that the overall work of the medical technologists can be standardized in relation to a given period of time.

[16] Compare *Middlesex General Hospital*, supra, in which the Board appears to have found that medical technologists' work did not require knowledge of an advanced type (and, therefore, presumably, did not meet the fourth requirement of 2(12)) because many of the medical technologists did not possess a college degree. Subsequently, the Board has stated that the possession or lack of a baccalaureate degree is not determinative of the professional status of employees. *Illinois Valley Community Hospital*, supra.

[17] *Compton Hill Medical Center*, supra; *Children's Hospital of Pittsburgh*, supra; *Barnert Memorial Hospital*, supra; *St. Barnabas Hospital*, supra.

[18] *St. Barnabas*, supra (medical technologists required to be licensed by the New York City Board of Health); *Methodist Hospital of Sacramento*, supra (medical technologists required to be licensed by the State of California).

With regard to automated testing, every automated test performed by the medical technologists requires some level of pre- and post-testing analysis, as well as the monitoring of the equipment during testing. In this regard, medical technologists evaluate the sample specimen (blood, urine, tissue, etc.) prior to testing to determine its viability and purity. For example, in the Employer's hematology department, medical technologists will examine the blood specimen for the presence of a clot and, if one is detected, will reject the sample as unacceptable, because the clot can affect the test results. Medical technologists also calibrate the diverse and sophisticated equipment (e.g., the coulter STKR in the hematology department; the Kodak Ektachem 700, the Abbott TDX and the Abbott IMX in the chemistry department; the coulter T540, Kodak DT, Kodak 500, etc., in the stat labs) in order to ensure proper methodology and the functioning of the equipment. Proper calibration requires that the medical technologists be able to make any necessary corrective adjustments to the equipment and/or to determine whether commercial repair is required. During testing, the medical technologists monitor the performance of the equipment to detect potential malfunctions. Finally, once an automated result is produced, the medical technologists analyze and screen that result to determine if it is within an acceptable range and, if not, the medical technologists use their experience and judgment to determine possible causes of adverse test results and whether such results should be reported to the physician or whether the tests must be repeated. For example, if a specimen is taken from an individual who has taken a certain medication, a normal result for that specimen may deviate from the standard normal ranges. In such circumstances, accurate equipment calibration may produce a valid result, but that alone does not indicate a normal or abnormal result for that specimen. Thus, a valid, normal, and reportable result is based on the composite of the factors surrounding the test, the equipment, and the specimen. This requires that the medical technologists possess the ability to assess all of these discrete factors.

These nonautomated tasks are performed consistently before, during, and after every test. Each step of the testing process requires a variety of judgments based on the unique characteristics of the sample and the testing procedure to be performed. These judgments necessarily involve intellectual analysis based on the medical technologists' education, experience, and expertise. Notwithstanding that certain tests are completed quickly and may be less complex, the degree of intellectual analysis and the consistent exercise of independent judgment and discretion applies to all tests. These duties are performed completely independently of the requesting physician.

Medical technologists here also have daily responsibilities beyond testing which are illustrative of their professional status. Medical technologists are responsible for the overall operation, quality control, and maintenance of the laboratory facility, its equipment, its testing methodology, and its processes.

We note that a fundamental underpinning of those cases in which we have found that medical technologists fall short of meeting the requirements of subparts (i) and (ii) has been the view that automation has reduced the discretion of these employees and, accordingly, the need for independent judgment. This, in turn, has given rise to the further conclusion that the nature of the work has become less intellectual and more routine and mechanical.[19] These assumptions, however, are valid only if previously nonautomated, intellectual duties, which required the use of independent judgment and discretion, were taken over by the automated equipment. That proposition is not supported by most of the prior cases (see fn. 8), or the briefs and the record before us now. Indeed, a reasonable inference may be drawn that the automatable tasks were those that were nonintellectual and nondiscretionary.

Moreover, we do not believe that the existence of rigid routines and protocols that medical technologists must follow for testing diminishes the intellectual nature of their work or obviates the need for independent judgment and discretion. Proper and accurate testing requires standard prescribed methodologies. The establishment of and adherence to these standard methodologies, however, should not lead to the conclusion that such testing is routine or mechanical. Similarly, although physicians may direct that a specific test or series of tests be performed on a sample specimen, the parameters of that request do not dictate the methodology and procedures used by the medical technologists in the preparation, performance, and evaluation of the test result. The physician's request merely sets in motion the complex testing process, separate and independent of that request. Indeed, the medical technologists' exercise of independent judgment and discretion regarding how the testing is to be done takes place after, and independent of, the physician's initial request.

Additionally, we note that although the work of medical technologists in certain settings may involve a greater or lesser degree of supervisory oversight or even approval, this alone does not alter the fundamental nature of the work performed by these employees. An employer's establishment of a supervisory hierarchy for the medical technologists properly serves the function of workflow direction, quality control, and ultimate accountability for the work. This type of a supervisory hierarchy, however, does not have the effect

[19] See cases discussed, supra at fn. 10.

of transforming the nature of the work. In this regard, by way of comparison, we note that the work of many settled professional employee classifications (e.g., physicians, RNs, or attorneys) is commonly supervised and directed by a more experienced or senior professional, without any diminution in the professional nature of the work performed by the supervised professional employee.

Further, although we recognize that medical technologists frequently perform some routine or obviously nonprofessional tasks, which are attendant to their overall functions, we find that such tasks do not detract from their status as professional employees, because many, if not most, of their duties are intellectual and require the exercise of discretion and independent judgment.[20]

In sum, we conclude that the preponderant nature of medical technologists' duties is intellectual and that it requires the consistent exercise of independent judgment and discretion.

Based on all of the foregoing, we conclude that the Employer's medical technologists specifically, and medical technologists in general, meet the four conjunctive requirements of Section 2(12) and, therefore, that they are professional employees. Moreover, we will apply a rebuttable presumption in all future cases that medical technologists are professional employees as defined in Section 2(12) of the Act. Any party seeking to rebut this presumption will carry the burden of establishing that the medical technologists in question do not engage in the duties customarily assigned to this classification of employees.

b. *The instant decertification petition is dismissed*

Notwithstanding our finding that the medical technologists are professional employees as defined in Section 2(12) of the Act, we have decided to dismiss the instant decertification petition and we will not direct an election among these employees for the following reasons. The certified unit covering the medical technologists specifically excludes professional employees. Thus, a decertification election is not necessary to remove these professional employees from the unit—the unit description automatically excludes them by its language. Moreover, although the Intervenor seeks to represent those employees in a separate unit, we conclude that an election is not warranted because we are unable to determine on this record whether a unit consisting solely of medical technologists is an appropriate unit. Mindful of Congress' admonition against the proliferation of bargaining units in the health care industry, we note that the record does not establish that the medical technologists are the only professional employees employed by the Employer. Rather, the record indicates that there may be other professsional classifications which perhaps also should be included in a unit with the medical technologists.[21] To the extent that a question concerning representation continues to be raised regarding these employees, by either the Union or the Intervenor, we will entertain any such subsequently filed petition at which time issues related to unit appropriateness can be litigated and resolved. Therefore, the instant petition is dismissed without prejudice to the right of any party, subsequent to this decision, to file a representation petition.

ORDER

It is ordered that the instant decertification petition is dismissed without prejudice.

[20] *Barnert Memorial Hospital*, supra, 217 NLRB at 782.

[21] This is unlike *Utah Power*, supra, 258 NLRB 1059, where the professional employees in question were the *only* professional employees employed by the employer and, presumably, would constitute an appropriate unit by themselves. We note that, here, although the Employer is not an acute care hospital (and, hence, the Board's Health Care Rules do not apply), in that context a unit of all professional employees (excluding physicians and registered nurses) would be appropriate. 29 CFR § 103, 284 NLRB 1580, 1596 (1989).